

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

CHARLESTON DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

CRIMINAL ACTION NO. 2:89-cr-00054-01

MICHAEL CURTIS,

Defendant.

MEMORANDUM OPINION AND JUDGMENT ORDER

Pending before the Court is a motion, brought pursuant to 18 U.S.C. § 3582(c)(2), to reduce Defendant's sentence based on a subsequent reduction in the applicable sentencing guideline. On November 1, 2007, the United States Sentencing Guidelines were amended to reduce by two levels the guidelines in Section 2D1.1 for cocaine base (also known as crack). Subsequently, the Sentencing Commission amended Section 1B1.10 to make the crack amendment retroactive, effective March 3, 2008. Pursuant to a Standing Order entered on February 6, 2008, this case was designated for Standard consideration.

The Court has received and considered the original Presentence Investigation Report (PSI), original Judgment and Commitment Order and Statement of Reasons, plea agreement, and addendum to the PSI from the Probation Office, and received any materials submitted by the parties on this issue. The Court has also considered the applicable factors under 18 U.S.C. § 3553(a), consistent with § 3582(c)(2), and public safety.

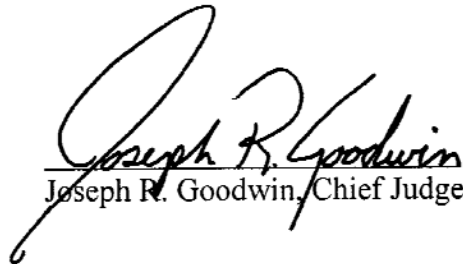
The defendant's original Presentence Investigation Report attributed 58.57 grams of cocaine base. His original offense conduct resulted in a base offense level of 32, and a criminal history

category of III. The defendant received a two-level enhancement for special offense characteristics, a two-level enhancement for obstruction of justice, and a four-level enhancement for his large role in the offense. His original guideline range was 360 months to life. The United States has objected to a two-level reduction in the defendant's sentence based on his behavior in prison. In response, the defendant argues that the behavior issues were not as bad as they appear on paper and point out that the defendant completed nine different certificate programs during his time in prison, including drug addiction education and completion of his General Equivalency Diploma.

Based on the foregoing considerations, the defendant's motion is **GRANTED**. The Court **ORDERS** that Defendant's base offense level be reduced by two levels, resulting in a new total offense level of 38, and a guideline range of 292 to 365 months. It is further **ORDERED** that Defendant's previous sentence be reduced to a period of 325 months, with credit for time served to date. This Order is subject to the prohibition contained within U.S.S.G. §1B1.10(b)(2)(C).

The Court **DIRECTS** the Clerk to send a copy of this Order to the defendant and counsel, the United States Attorney, the United States Probation Office, the Federal Bureau of Prisons and the United States Marshals.

ENTER: October 20, 2008


Joseph R. Goodwin, Chief Judge